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November 2, 1990

**BY FEDERAL EXPRESS**

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Agency - Region I  
Office of Regional Counsel  
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Superfund Records Center  
SITE: Coakley  
BREAK: 11.9  
OTHER: 559325

Re: Coakley Landfill, North Hampton and Greenland,  
New Hampshire

Dear Ms. Catri:

This letter is to follow-up on our conversation on October 24, 1990, and to supplement my letter to Mr. Stephen J. Calder dated May 25, 1990. As EPA Region I is aware, when a subsidiary of Browning-Ferris Industries believes it may be liable for a CERCLA site, it attempts to work with the PRP Group to address the problems presented by that site. In this case, however, Browning-Ferris Industries of New Hampshire, Inc. ("BFINH") has strong reason to believe that it has no legal responsibility for the Coakley Landfill CERCLA Site because, as my May 25, 1990 letter discusses, the City of Portsmouth selected the Coakley Site for materials BFINH's predecessor company transported there.

EPA has not responded to my May 25 letter. Accordingly, on October 24, I called you to request a meeting to discuss EPA's views regarding BFI's responsibility for the Site. I was concerned when you told me that it was EPA Region I's longstanding policy not to meet with individual PRPs to discuss their involvement at a CERCLA Site. As I discussed with you earlier, I cannot understand how this could be a longstanding Agency policy since EPA Region I has agreed to such meetings under similar circumstances. Moreover, I believe that such a meeting is particularly appropriate where, as is the case with BFINH, the PRP requesting the meeting has a history of acting responsibly with regard to its CERCLA liability. Thus, I would hope that you would reconsider my request for a meeting to discuss BFINH's involvement at the Coakley Site.

Cynthia Catri, Esq.  
November 2, 1990  
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In our conversation, I also agreed to supplement my May 25 letter with new information regarding BFINH's alleged involvement with the Coakley Site. This information is consistent with BFINH's belief that it is not liable for this Site. As I stated in my May 25 letter, Great Bay hauled office trash to the Coakley Landfill from National Gypsum under the City of Portsmouth's contract with Coakley. In a recent review of Mr. Coakley's documents, we learned that Great Bay also transported some structurally-damaged gypsum wallboard for National Gypsum to the Coakley landfill in 1979-80. The City of Portsmouth apparently did not pay for this material under its contract with Mr. Coakley.

According to Mr. Coakley, Calvin Canney, City Manager of Portsmouth, personally arranged with Coakley to have the damaged wallboard from National Gypsum brought to the Coakley Landfill. Mr. Canney made this arrangement apparently to enable Coakley to use the material as windrows for the landfill. Mr. Raymond Bardwell, former owner of Great Bay, has confirmed this information. Thus, Mr. Canney and the City of Portsmouth, rather than Great Bay, selected the Coakley Site to dispose of the wallboard. In addition, the gypsum wallboard is not a hazardous substance under CERCLA. It is comprised solely of gypsum ( $\text{CaSO}_4 - 2\text{H}_2\text{O}$ ), water and paper. We have determined that the wallboard manufactured by National Gypsum during the relevant time period did not contain asbestos or other hazardous substances. If it will assist you, BFINH will provide affidavits regarding these facts.

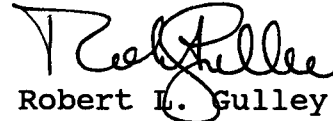
In addition, Great Bay may have taken shipments of construction debris to the Coakley landfill which were not covered by the City's contract with Coakley. These shipments consisted exclusively of wood, crushed stone, and roofing material. Mr. Coakley believes that any such shipments would also have been brokered by Mr. Canney. Regardless, these materials transported were also not hazardous substances.

In May 1990, BFINH decided to participate with the Coakley PRP Group on a limited basis until it received a response from the Agency to ensure that EPA did not have information unknown to BFINH which would indicate that BFINH actually may be a responsible party. In the absence of any response from the Agency, BFINH will have to base its decision regarding its future participation with the Group on the existing exculpatory information. However, as I indicated above, BFINH will make every effort to continue to participate with the Coakley Group if the Agency has information that BFINH is a responsible party for the Site.

Cynthia Catri, Esq.  
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I will contact you later this week to determine whether EPA is willing to meet with us. Thank you for your assistance.

Sincerely,

  
Robert L. Gulley

cc: Mr. Stephen J. Calder  
Mr. Michael Miller  
Donna L. Kolar, Esq.